

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JAMES BAUHAUS,)
)
Petitioner,)
)
v.) Case No. CIV-20-01003-JD
)
SCOTT CROW,)
)
Respondent.)

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is United States Magistrate Judge Gary M. Purcell’s Report and Recommendation [Doc. No. 8], recommending denial of James Bauhaus’s (“Mr. Bauhaus”) Application for Leave to Proceed *In Forma Pauperis* (“Application”). [Doc. No. 7]. The Court referred this action to Judge Purcell consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Mr. Bauhaus has objected to the Report and Recommendation (“Objection”). [Doc. No. 9]. Although Mr. Bauhaus filed his Objection after the December 7, 2020, deadline (Objection filed on December 10, 2020), the Court will nonetheless consider the Objection. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991) (failure to timely object to report and recommendation risks “firm waiver” of appellate review). Because an objection is being considered, the Court will review the Report and Recommendation de novo. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”).

The Report and Recommendation recommends that the Court deny the

Application, finding that Mr. Bauhaus “has sufficient financial resources to pay the filing fee as his institutional account has a current balance of \$717.79.” Report and Recommendation at 1. Mr. Bauhaus’s Objection mostly addresses the merits of his claim and grievances about his ability to earn money compared to individuals who are not incarcerated. Objection at 1–2. The Objection does not dispute the substance of the Report and Recommendation (i.e., that Mr. Bauhaus has the ability to pay the full filing fee), and appears to take the position that Mr. Bauhaus has already paid the \$5.00 filing fee. Objection at 1 (“the court appears to have already accepted the first, named filing fee of \$5 sent 9-30-20”). *See also* 28 U.S.C. § 1914(a) (“on application for a writ of habeas corpus the filing fee shall be \$5”).

The docket does not reflect Mr. Bauhaus’s payment of the filing fee, and Mr. Bauhaus has not provided any evidence that he has paid the fee. [*See also* Doc. No. 4 (informing Mr. Bauhaus of his lack of payment of the filing fee)]. The Court has also independently confirmed with the registry of the Court that it has not received a filing fee attributed to this case number or in Mr. Bauhaus’s name. Because the only items before the Court indicate that Mr. Bauhaus has not paid the filing fee, and because the Court agrees with the Report and Recommendation’s conclusion that Mr. Bauhaus has the ability to pay the filing fee, the Court adopts the Report and Recommendation.

Therefore, the Court **ACCEPTS** and **ADOPTS** the Report and Recommendation [Doc. No. 8] for the reasons stated therein. Petitioner’s Application for Leave to Proceed *in Forma Pauperis* [Doc. No. 7] is **DENIED**. Unless Mr. Bauhaus pays the filing fee of \$5.00 by **February 2, 2021**, this action will be dismissed without prejudice.

IT IS SO ORDERED this 12th day of January 2021.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE